

VIRGINIA:

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BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANTS: Hurt McGuire Land Trust ("Trust"), and )  
Reserve Coal Properties ("Reserve"), )

DOCKET NO.  
VGOB 00-0321-0777-01

RELIEF SOUGHT: Issuance of an Amended Supplemental )  
Order Amending Prior Orders Affecting )  
Drilling Unit P-43 Located in the Oakwood )  
Coalbed Methane Gas Field I, )  
Buchanan County, VA (herein "Subject )  
Drilling Unit" to Provide: )  
(1) Calculation of Funds Unit Operator )  
Deposited into the Escrow Account for )  
Subject Drilling Unit by Tract Subaccounts; )  
(2) to Applicants a Royalty )  
Accounting; )  
(3) Disbursement to Trust and Reserve )  
in Accordance with Their Royalty Agree- )  
ment All of Those Funds Deposited by the )  
Unit Operator into Subject Drilling Unit's )  
Escrow Subaccount for VGOB Tract 2A )  
And a Portion of Those Funds Deposited )  
By the Unit Operator into Said Account for )  
VGOB Tract 2B. )

REPORT OF THE BOARD

FINDINGS AND ORDER

1. **Hearing Date and Place:** This matter came on for final hearing before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on March 18, 2003 at the Southwest Virginia Higher Education Center on the campus of Virginia Highlands Community College, Abingdon, VA.
2. **Appearances:** Mark Swartz, Esq. of the firm Swartz and Stump L. C. appeared for the Unit Operator; and Sharon Pigeon, Assistant Attorney General, was present to advise the Board.
3. **Jurisdiction and Notice:** Pursuant to Va. Code §§ 45.1-361.1 *et seq.*, and in particular Va. Code §§ 45.1-361.21 and 45.1-361.22, the Board finds that it has jurisdiction over the establishment and maintenance of an escrow account, with tract subaccounts, for each of the coalbed methane gas drilling units established by the Board through its field rules that are subject to a Board pooling order. Further, the Unit Operator is required to deposit, as applicable, those funds specified in Va. Code § 45.1-361.21.D., 45.1-361.22.A.2, 45.1-361.22.A.3 and 45.1-361.22.A.4 into the applicable escrow tract subaccounts. The Board finds that: (1) while it does not have jurisdiction to resolve conflicting claims to the ownership of the Coalbed Methane Gas produced by the Unit Operator from wells located on Subject Drilling Unit, and (2) while it does not have jurisdiction to interpret agreements by and between the Gas owners/claimants and/or the Unit Operators or to abridge or contravene the provisions of such agreements, (3) pursuant to Va. Code § 45.1-361.22.A.5, the Board does have jurisdiction and authority to disburse funds from the Escrow Account provided the Board has been provided with a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between the

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conflicting claimants or an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein.

4.

**Prior Proceedings:**

- 4.1. On April 27, 2000, the Board executed its order pooling all interests in the Subject Drilling Unit for the production of occluded natural gas produced from coalbeds and rock strata associated therewith (herein "Gas") in accordance with the provisions of Va. Code §§ 45.1-361.21 and 45.1-361.22 (herein "Pooling Order"). The Pooling Order was filed with the Clerk of the Circuit Court of Buchanan County on May 3, 2000 in Deed Book 506 at Page 565. The Board designated Pocahontas Gas Partnership as the Unit Operator of the Subject Drilling Unit. The Pooling Order was amended and supplemented by the Board's Supplemental Order Regarding Elections executed on August 16, 2000 that was filed with the Clerk's Office on August 24, 2000 in Deed Book 512 at page 1 ("Supplemental Order") (hereafter the Pooling Order and Supplemental Order are collectively referred to as "Pooling Order").
- 4.2 To the extent claims to the Gas were in conflict, pursuant to Va. Code § 45.1-361-22 payments attributable to said conflicting claims/interests were ordered deposited by the Unit Operator into the escrow account established by the Pooling Order (herein "Escrow Account"). According to the Pooling Order, the coal fee ownership of the Trust and the oil and gas fee ownership of Reserve in a 39.87-acre tract known as VGOB Tract 2A and in 633/763 of a 13.73-acre tract known as VGOB Tract 2B were in conflict and became subject to the escrow requirements of the Pooling Order
- 4.3 The Unit Operator's Affidavit Regarding Escrow and Supplemental Order dated July 11, 2002, a copy of which is attached to and made a part hereof, states under oath:  
  
"That after the pooling hearing held in the captioned matter, the Hurt McGuire Land Trust and Reserve Coal Properties entered into a royalty split agreement; that by the terms of said agreement escrow regarding the conflicting claims of the Hurt McGuire Land Trust and Reserve Coal Properties is no longer required."
- 4.4 By letter dated September 12, 2002, the Board gave notice to the Trust, Reserve, the Unit Operator and the Escrow Agent that on its own motion it would take the Affidavit referred to in Paragraph 4.3 above under consideration at its hearing on October 15, 2002 and consider whether to amend the Pooling Order to: (1) provide for the disbursement of funds on deposit in the Escrow Account attributable Tract 2A and a 633/763 portion of Tract 2B to Trust and Reserve in accordance with the terms of their split agreement, and (2) delete the requirement that the Unit Operator place future royalties attributable to Tract 2A and said portion of Tract 2B in the Escrow Account. Further, the Board ordered the Unit Operator to file with the Board a complete accounting of funds it has placed on deposit in the Escrow Account.
- 4.5 The Unit Operator filed the attached accounting for Subject Drilling Unit's Escrow Account with the Board ("Accounting").
- 4.6 At its hearing on November 19, 2002, the Board approved disbursement of escrowed funds attributable to Tract 2A and 633/763 of Tract 2B.
- 4.7 The Unit Operator discovered an error in testimony regarding parties to receive disbursement and, after application to the Board and notification of affected parties, submitted corrected testimony at the hearing on March 18, 2003. Corrected affidavits and exhibits are attached and made a part hereof.

5. **Findings:**

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5.1. Va. Code 45.1-361.22.5 provides:

*The Board shall order payment of principal and accrued interests, less escrow account fees, from the escrow account to conflicting claimants within thirty days of receipt of notification of (i) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them or (ii) an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein. The amount to be paid to the conflicting claimants shall be determined based on the percentage of ownership interest of the conflicting claimants as shown in the operator's supplemental filing made part of the pooling order that established the escrow account, the operator's records of deposits attributable to those tracts for which funds are being requested, and the records of the escrow account for the coalbed methane gas drilling unit. The interests of any cotenants who have not entered into an agreement shall remain in the escrow account.*

5.2 The Unit Operator has certified and represented to the Board that:

- (1) Trust is the sole owner of the coal estate underlying all of VGOB Tract 2A and 2B of the Subject Drilling Unit;
- (2) Reserve is the sole owner of oil and gas estate underlying all of VGOB Tract 2A and 633/763 of the 13.73 acres comprising VGOB Tract 2B of the Subject Drilling Unit;
- (3) that together Trust and Reserve claim to have and own, in the aggregate, the following conflicting Gas royalty interest in Subject Drilling Unit by virtue of their respective ownership interests in VGOB Tracts 2A and 633/763 of VGOB Tract 2B:

VGOB Tract #	Interest In Unit	Percent of Escrow	Escrowed Funds Attributable to Tract 2A and 633/763 of 2B As of 9/25 /02
2A	49.83750%	74.38433%	\$ 24,566.72
633/763 OF 2B	14.23835%	21.25127%	\$ 7,018.60

- (4) that Trust and Reserve have entered into an agreement to split on a 50/50 basis royalties attributable to their conflicting claims to coalbed methane gas, including but not limited to their conflicting claims to ownership of coalbed methane gas underlying all of VGOB Tract 2A and a 633/763 portion of VGOB Tract 2B of Subject Drilling Unit and their conflicting claims to bonuses and/or royalties deposited by the Unit Operator in the Escrow Account that are attributable to same.

6. **Relief Granted:**

- 6.1. For the reasons set forth in Paragraph 4 and 5 above, and based upon the Accounting, the Escrow Agent is ordered to, Within 10 days of receipt of this order, (1) disburse fifty percent (50%) of the funds attributable to VGOB Tract 2A, being 37.192165 percent of funds on deposit in the Escrow Account, to the Hurt McGuire Land Trust, c/o Charles Green, P. O. Box 1067, Bluefield, VA 24605, (2) disburse fifty percent (50%) of the funds attributable to the VGOB Tract 2A, being 37.192165 percent of funds on deposit in the escrow account, to Reserve Coal Properties, P. O. Box 947, Bluefield, VA 24605, (3) disburse fifty percent (50%) of the funds attributable to 633/763 of VGOB Tract 2B, being 10.625635 percent of the funds on deposit in the Escrow Account, to the Hurt McGuire Land Trust, c/o Charles Green, P. O. Box 1067, Bluefield, VA 24605, and (4) disburse fifty percent (50%) of the funds attributable to 633/763 of VGOB Tract 2B, being 10.625635 percent of the funds on deposit in the Escrow Account, to Reserve Coal Properties, P. O. Box 947, Bluefield, VA. Further, because there are other owners in Tract 2B who are subject to escrow under the Supplemental

Order, the Escrow Agent is directed to continue the Escrow Account for the subject tract and drilling unit.

6.2. The Exhibits E and EE to the Pooling Order are deleted in toto and replaced with the Exhibit E and EE attached to the Affidavit. Further, the Supplemental Order filed in this cause is hereby modified to delete the requirement that payments attributable to the Trust's and Reserve's conflicting coalbed methane gas ownership interests in VGOB Tract 2A and 633/763 of VGOB Tract 2B be deposited by the Unit Operator into the Escrow Account. To the extent not specifically granted herein, any other or further relief is denied.

7. **Conclusion:**

Therefore, the requested relief and all terms and provisions set forth above in Paragraph 6 above be and hereby are granted and IT IS SO ORDERED.

8. **Appeals:**


Appeals of this Order are governed by the provisions of Va. Code § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court and that whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission is a party in such action, the court shall hear such appeal de novo.

9. **Effective Date:** This Order shall be effective on the date of its execution.

DONE AND EXECUTED this 8<sup>th</sup> day of April, 2003, by a majority of the Virginia Gas and Oil Board.

  
Chairman, Benny R. Wampler

DONE AND PERFORMED this 8<sup>th</sup> day of April, 2003, by an Order of this Board.

  
B. R. Wilson  
Principal Executive to the Staff  
Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA )  
COUNTY OF WISE )

Acknowledged on this 8<sup>th</sup> day of April, 2003, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.

  
Susan G. Garrett  
Notary Public

My Commission expires: 9/30/05

COMMONWEALTH OF VIRGINIA )  
COUNTY OF WASHINGTON )

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Acknowledged on this 8<sup>th</sup> day of April, 2003, personally before me a notary public in and for the Commonwealth of Virginia, appeared B. R. Wilson, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.

  
Diane J. Davis  
Notary Public

My commission expires: 9/30/05

VIRGINIA:

## SUPPLEMENTAL AFFIDAVIT RE CBM UNIT P-43

## BEFORE THE VIRGINIA GAS AND OIL BOARD

IN RE: Application of Pocahontas Gas Partnership for Forced Pooling of Interests in CBM Unit P-43  
VGOB-00-0321-0777 in the Garden District of Buchanan County, Virginia

AFFIDAVIT OF POCAHONTAS GAS PARTNERSHIP (herein "Designated Operator")  
REGARDING ESCROW AND SUPPLEMENTAL ORDER

Leslie K. Arrington, being first duly sworn on oath, deposes and says:

That your affiant is employed by Consol Energy Inc. as a Gas Engineer and is duly authorized to make this affidavit on behalf of POCAHONTAS GAS PARTNERSHIP, the Designated Operator;

That the Order entered on August 16, 2000, by the Virginia Gas and Oil Board (hereinafter "Board") regarding the captioned CBM Unit required the Applicant to tender to the Escrow Agents funds attributable to the rights, interests and claims of the persons identified in the annexed Exhibit E as subject to escrow under the Board's Order pooling the captioned Unit, Board Regulations and the Code of Virginia;

That after the pooling hearing held in the captioned matter, the Hurt McGuire Land Trust and Reserve Coal Properties entered into a royalty split agreement; that by the terms of said agreement escrow regarding the conflicting claims of the Hurt McGuire Land Trust and Reserve Coal Properties is no longer required;

That annexed hereto are revised Exhibits E and EE;


That the Designated Operator has heretofore filed its petition seeking the disbursement from escrow of all funds on deposit attributable to the conflicting claims of the Hurt McGuire Land Trust and Reserve Coal Properties or the Designated Operator is preparing its petition seeking disbursement from escrow of all funds on deposit attributable to the conflicting claims of said respondents and will file same at its earliest opportunity; and

That the annexed supplemental order provides that the payment of funds subject to the annexed royalty split agreement shall be made to the said parties thereto rather than to the Escrow Agent.

Dated at Tazewell, Virginia, this 24<sup>th</sup> day of March, 2003.

  
Leslie K. Arrington

Taken, subscribed and sworn to before me by Leslie K. Arrington as Gas Engineer of Consol Energy Inc., on behalf of the corporate Designated Operator, this 24<sup>th</sup> day of March, 2003.

  
Notary

My commission expires: 10/31/05



VGOB Tract #									
		2A	2B						
		39.87	13.73						
Check Date				Check Total	Interest	Operator Balance	Bank Balance		
10/25/00	\$5,606.32	\$1,930.62	\$7,536.94	\$35.16	\$7,572.10				
11/25/00	\$1,143.41	\$393.76	\$1,537.17	\$38.00	\$9,147.27				
12/25/00	\$1,408.78	\$485.14	\$1,893.92	\$37.12	\$11,078.31				
1/25/01	\$1,078.07	\$371.25	\$1,449.32	\$38.86	\$12,566.49				
2/25/01	\$1,657.36	\$570.75	\$2,228.10	\$27.31	\$14,821.90				
3/25/01	\$2,340.86	\$806.12	\$3,146.98	\$29.36	\$17,998.24				
4/25/01	\$1,187.89	\$409.08	\$1,596.96	\$28.83	\$19,624.03				
5/25/01	\$1,176.08	\$405.01	\$1,581.08	\$23.62	\$21,228.73				
6/25/01	\$1,197.74	\$412.47	\$1,610.20	\$19.89	\$22,858.82				
7/25/01	\$1,046.34	\$360.32	\$1,406.66	\$20.84	\$24,286.32				
8/25/01	\$718.60	\$247.46	\$966.06	\$52.52	\$25,304.90				
9/25/01	\$564.56	\$194.42	\$758.98	\$41.91	\$26,105.79				
10/25/01	\$576.74	\$198.62	\$775.36	\$37.65	\$26,918.80				
11/25/01	\$296.87	\$102.23	\$399.10	\$30.88	\$27,348.78				
12/25/01	\$317.90	\$109.48	\$427.38	\$33.56	\$27,809.72				
1/25/02	\$312.29	\$107.55	\$419.84	\$19.92	\$28,249.48				
2/25/02	\$365.41	\$125.83	\$491.24	\$14.95	\$28,755.67				
3/25/02	\$386.42	\$133.08	\$519.50	\$17.13	\$29,292.30				
4/25/02	\$337.68	\$116.28	\$453.96	\$19.73	\$29,765.99				
5/24/02	\$440.36	\$151.66	\$592.02	\$16.60	\$30,374.61				
6/25/02	\$478.13	\$164.65	\$642.78	\$16.35	\$31,033.74				
7/25/02	\$474.65	\$163.44	\$638.09	\$17.53	\$31,689.36				
8/23/02	\$465.10	\$160.16	\$625.26	\$17.32	\$32,331.94				
9/25/02	\$516.81	\$177.99	\$694.80		\$33,026.74	\$33,026.74			

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McGuire / RCP McGuire / RCP, et al.

Note: Tract 2B, disburse 21.25127% of escrow  
Tract 2A, disburse 74.38433% of escrow.  
The remaining 4.3644% has not been resolved and will remain in escrow.

Docket #VGOB-00-0321-0777

List of Conflicting Owners/Claimants that require escrow

	Net Acres in Unit	Interest in Unit
<b><u>TRACT #2B - 13.73 acres</u></b>		
<b><u>COAL FEE OWNERSHIP</u></b>		
(1) Hurt McGuire Land Trust c/o Charles Green P. O. Box 1067 Bluefield, VA 24605	13.73 acres	17.16250%
<b><u>OIL &amp; GAS FEE OWNERSHIP</u></b>		
(1) Reserve Coal Properties, et al	13.73 acres	17.16250%
(b) Curtis White P. O. Box 72 Whitewood, VA 24657	0.191 acres 1/72 of 13.73 acres	0.23837%
(c) Gerald V. Cantrell P. O. Box 47 Red Ash, VA 24640	0.245 acres 1/56 of 13.73 acres	0.30647%
(d) Lonnie Cantrell Sr. Rt. 1, Box 202N Cedar Bluff, VA 24609	0.245 acres 1/56 of 13.73 acres	0.30647%
(e) Marshall E. Cantrell Rt. 2, Box 330 New Castle, VA 24127	0.245 acres 1/56 of 13.73 acres	0.30647%
(f) Gayther L. Cantrell Sr. Rt. 2, Box 316 New Castle, VA 24127	0.245 acres 1/56 of 13.73 acres	0.30647%
(g) Glen D. Cantrell Rt. 2, Box 325A New Castle, VA 24127	0.245 acres 1/56 of 13.73 acres	0.30647%
(h) Deborah L. Hypes Rt. 2, Box 314H New Castle, VA 24127	0.245 acres 1/56 of 13.73 acres	0.30647%
(i) Linda White 7901 Boydton Plank Rd. #38 Petersburg, VA 23802	0.041 acres 1/336 of 13.73 acres	0.05108%



Docket #VGOB-00-0321-0777

List of Conflicting Owners/Claimants with Royalty Split Agreements

	Net Acres in Unit	Interest in Unit	Percent of Escrow
<b><u>TRACT #2A - 39.87 acres</u></b>			
<b><u>COAL FEE OWNERSHIP</u></b>			
(1) Hurt McGuire Land Trust c/o Charles Green P. O. Box 1067 Bluefield, VA 24605	39.87 acres	49.83750%	74.38433%
<b><u>OIL &amp; GAS FEE OWNERSHIP</u></b>			
(1) Reserve Coal Properties P. O. Box 947 Bluefield, VA 24605	39.87 acres	49.83750%	74.38433%
<b><u>TRACT #2B - 13.73 acres</u></b>			
<b><u>COAL FEE OWNERSHIP</u></b>			
(1) Hurt McGuire Land Trust c/o Charles Green P. O. Box 1067 Bluefield, VA 24605	13.73 acres	17.16250%	25.61567%
<b><u>OIL &amp; GAS FEE OWNERSHIP</u></b>			
(1) Reserve Coal Properties, et al	13.73 acres	17.16250%	
(a) Reserve Coal Properties P. O. Box 947 Bluefield, VA 24605	11.391 acres 633/763 of 13.73 acres	14.23835%	21.25127%

VIRGINIA: In the Clerk's Office of the Circuit Court of Buchanan County. The foregoing instrument was this day presented in the Office aforesaid and is, together with the certificate of acknowledgment annexed, admitted to record this 5th day of April, 20 03 12:43 P. M.  
Deed Book No. 566 and Page No. 395.  
Returned to: Diane TESTE: James M. Bevens, Jr., Clerk  
TESTE: Jessie S. Miller, Deputy Clerk